



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

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May 16, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
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Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION TO OPPOSE ASSEMBLY BILL 323 (CHESBRO) AND DIRECT THE SACRAMENTO ADVOCATES TO COMMUNICATE THIS POSITION TO THE GOVERNOR AND THE LEGISLATURE (ITEM NO. 14, AGENDA OF MAY 21, 2013)

Item 14 on the May 21, 2013 Agenda is a motion by Supervisor Knabe to oppose AB 323 and direct the Sacramento advocates to communicate this position to the Governor and the Legislature.

Existing Law

The California Integrated Waste Management Act of 1989 (Act) requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. The Act also requires the source reduction and recycling element to divert from disposal 50% of all solid waste subject to the element through source reduction, recycling, and composting activities, with specific exception. Under the Act, the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including the use of alternative daily cover, constitutes diversion through recycling and is not considered disposal.

Assembly Bill 323

AB 323 (Chesbro), which as introduced on February 12, 2013, would phase-out diversion credit for green waste used as alternative daily cover (ADC) by 2020 and would require large-quantity commercial generators of organic waste that is traditionally

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sent to landfills to source separate and recycle this material. Specifically, this bill would: 1) require the California Department of Resources Recycling and Recovery (DRRR) to adopt regulations to provide that, no later than January 1, 2020, the use of green material as alternative daily cover or alternative intermediate cover does not constitute diversion through recycling and would be considered disposal for purposes of the Integrated Waste Management Act of 1989; 2) require the DRRR to adopt, by January 1, 2017, regulations to require a large-quantity commercial organics generator, as defined, to arrange for separate organics collection and recycling services; and 3) define commercial solid waste to include all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or multi-family dwelling of five or more units.

Analysis of AB 323

According to the Department of Public Works (DPW), Federal solid waste regulations require owners or operators at municipal solid waste landfills to cover disposed solid waste with six inches of earthen material at the end of the operating day to control odors, vectors, fires, litter, and scavenging. The California Code of Regulations allow for the appropriate enforcement agency to approve the use of green materials alternative daily cover (ADC).

The Department of Public Works indicates that landfills within the County have been utilizing green materials as ADC for a number of decades, and most jurisdictions in the County rely on ADC to meet the State's 50% waste diversion mandate. DPW notes that regulations that eliminate or phase out the use of green waste as ADC could have significant negative impacts on the County due to the lack of infrastructure for alternative green material management within the County. The proposed legislation assumes the availability of composting facilities to accept the green waste that would otherwise be used as ADC; however, there are significant challenges that would prevent the County and other local jurisdictions from being able to send additional green waste materials to composting, including: 1) the lack of commercial composting facilities located within the County; 2) the lack of a viable market for compost in the Southern California region; and 3) contamination issues associated with curbside collected green waste which make this type of feedstock highly problematic for composting operators to accept.

The Department of Public Works estimates that the County diverts 58% of waste from landfills, and that green material accounts for a large portion of the diverted waste. DPW reports that the elimination of diversion credit for green waste used as ADC could jeopardize the County's and other local jurisdictions' compliance with the State's waste diversion mandate under the Act, subjecting the non-compliant jurisdictions to fines of up to \$10,000 per day.

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Finally, the Department of Public Works indicates that requiring large quantity commercial organics generators to arrange for separate organics collection and recycling services may create additional cost and operational impact on businesses, waste haulers and local governments in the County. While the County has recently established a commercial franchise system and is investigating separate organics collection, DPW notes there is still a lack of organics processing facilities in the County that could take collected organics. Based on a recent analysis performed by the Sanitation Districts of Los Angeles County, the potential County-wide costs associated with separate collection, transportation, and processing of compostable organics, including green waste, could reach upwards of \$200 million annually.

AB 323 is supported by: The California Climate and Agriculture Network; California Coastal Protection Network; California League of Conservation Voters; Californians Against Waste; City and County of San Francisco; Coalition for Clean Air; Humboldt Waste Management Authority; Los Angeles Alliance for a New Economy; Marin County Hazardous and Solid Waste; Management Joint Powers Authority; Napa Recycling and Waste Services; Natural Resources Defense Council; Northern California Recycling Association; Planning and Conservation League; Recology, Inc.; and Sierra Club California, among others.

The measure is opposed by: The California State Association of Counties; Sanitation Districts of Los Angeles County; and the Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force.

AB 323 passed the Assembly Natural Resources Committee by a vote of 6 to 3 on April 29, 2013 and was referred to the Assembly Appropriations Committee. A hearing date has not been set.

Conclusion

This office and the Department of Public Works recommend an oppose position on AB 323. Approval of this motion to oppose AB 323 and direct the Sacramento advocates to communicate this position to the Governor and the Legislature is consistent with existing Board policy to oppose legislation that eliminates diversion credits for the use of green waste as alternative daily cover.

WTF: RA
MR:AO:ma

c: Executive Office, Board of Supervisors
County Counsel
Department of Public Works